



The stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

### ISSUES

- (1) Whether claimant suffered personal injury on the date of the alleged accident.
- (2) Whether claimant's alleged accidental injury arose out of and in the course of his employment.
- (3) The nature and extent of claimant's injury and disability, if any.
- (4) The liability, if any, of the Kansas Workers Compensation Fund.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, and in addition the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

Claimant has proven by a preponderance of the credible evidence that he suffered personal injury by accident arising out of and in the course of his employment on the day alleged. In reviewing the evidence and record contained herein, the Appeals Board finds the Award of Administrative Law Judge John D. Clark dated May 12, 1994, fully and accurately, sets out the award to which claimant is appropriately entitled. As such the Appeals Board adopts in toto the Award of Administrative Law Judge John D. Clark as its own.

In so adopting the findings of Judge Clark, the Appeals Board finds that claimant is entitled to a fifteen percent (15%) impairment of function to the body as a whole through the date of his layoff, January 19, 1993. Thereafter, claimant is entitled to a sixty percent (60%) permanent partial general body work disability as a result of the injuries suffered on August 19, 1991 and each and every working day until October 29, 1992.

The Appeals Board further finds the respondent has failed to prove by a preponderance of the credible evidence that it had knowledge that claimant was a handicapped individual prior to the date of injury and, in so failing to sustain its burden, any liability against the Kansas Workers Compensation Fund must be denied.

### AWARD

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award and Nunc Pro Tunc of Administrative Law Judge John D. Clark, dated May 12, 1994, and May 26, 1994, respectively, should be, and hereby are, affirmed.

**AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR** of the claimant, Gilbert Lane, for an award against the respondent, Boeing Military Airplane and its insurance carrier, Aetna Casualty & Surety Company, for an accidental injury sustained on August 19, 1991. Claimant is awarded a 15% impairment of function to the body as a whole through January 19, 1993, followed thereafter by a 60% permanent partial general body work disability for injuries suffered while employed with the respondent.

Claimant is entitled to 17 weeks of temporary total disability compensation at the rate of \$289.00 per week in the total of \$4,913.00, followed by 57 weeks of permanent partial general body disability at the rate of \$67.87 per week in the total of \$3,868.59 for a 15% permanent partial functional compensation for a total of \$8,781.59. Thereafter, claimant is entitled to \$291.79 per week until further order of the Director or claimant has reached the total compensation level of \$100,000.00 for a 60% permanent partial general body disability.

As of April 14, 1995, claimant would be entitled to 17 weeks of temporary total disability compensation at the rate of \$289.00 per week, totalling \$4,913.00, followed by 57 weeks of permanent partial functional compensation at the rate of \$67.87 per week totalling \$3,868.59, followed by 116.57 weeks of permanent partial general body disability at the rate of \$291.79, totalling \$34,013.96, for a total of \$42,795.55, which is ordered paid in one lump sum, less any amounts previously paid. Thereafter, the remaining balance of \$57,204.45 shall be paid at the rate of \$291.79 per week until fully paid or until further order of the Director.

Medical expenses incurred by the claimant as a result of his accidental injury shall be awarded to be paid by respondent as set forth in the May 12, 1994, Award of Administrative Law Judge John D. Clark.

The Kansas Workers Compensation Fund is assessed no liability in this matter but shall be responsible for the payment of its own attorney fees.

Fees necessary to defray the expense of the administration of the Kansas Workers Compensation Act are to be assessed against the respondent to be paid as follows:

Alexander Reporting Co.	
Deposition of Paul Stein, M.D.	\$88.92
Deposition of Lawrence R. Blaty	\$163.48
Deposition of Jerry Dean Hardin	\$292.60
Deposition Services	
Deposition of Kenneth D. Zimmerman, M.D.	\$363.40
Barber & Associates	
Transcript of Regular Hearing	\$154.80

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April, 1995.

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BOARD MEMBER

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- c: Michael Snider, Wichita, KS  
Frederick L. Haag, Wichita, KS  
Becky Hurtig, Wichita, KS  
John D. Clark, Administrative Law Judge  
George Gomez, Director